

DEPARTMENT OF STATE REVENUE

04-20200114.SLOF; 04-20200117.SLOF

04-20200118.SLOF; 04-20200119.SLOF

**Supplemental Letter of Findings: 04-20200114;
04-20200117; 04-20200118; 04-20200119
Gross Retail Tax
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Upon rehearing, the Department agrees with Indiana recreational vehicle dealership that a sale of a recreational vehicle, which took place in Indiana, after which the recreational vehicle was registered in a reciprocal state, was exempt from Indiana sales tax. Additionally, Taxpayer proved that its failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence, thus penalty should not be assessed.

ISSUE**I. Gross Retail Tax - Sales of Recreational Vehicles to be Registered in a Reciprocal State.**

Authority: IC § 6-2.5-13-1; IC § 6-2.5-5-39; Sales Tax Information Bulletin 72 (Effective July 1, 2017); Sales Tax Information Bulletin 28S (March 2017).

Taxpayer argues that the Department erred in assessing sales tax on the sale of a recreational vehicle to a non-resident who later titled or registered the recreational vehicle in a reciprocal state.

II. Tax Administration - Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests penalties assessed in addition to assessed sales tax.

STATEMENT OF FACTS

Taxpayer is an Indiana recreational vehicle ("RV") dealership. During tax year 2018, Taxpayer made four sales in particular for which Taxpayer charged no Indiana sales tax. Two of those sales were made to non-residents and were delivered in Ohio. The other two sales were delivered in Indiana but were registered in reciprocal states. Taxpayer treated the sales as tax exempt and did not charge, collect, or remit sales tax on any of these sales. Rather, a Form ST-137RV, Affidavit of Exemption by a Nonresident on the Purchase of a Recreational Vehicle/Cargo Trailer, was filed to support the exemption status. Upon receipt of the ST-137RV forms, the Indiana Department of Revenue ("Department") reviewed the transactions and issued Taxpayer a proposed assessment of sales tax for each purchase.

Taxpayer disagreed with the assessments and filed a timely protest. A telephonic administrative hearing was held and the Department issued Letter of Findings 04-20200114; 04-20200117; 04-20200118; 04-20200119 ("LOF"), which, at the time of the writing of this Supplemental Letter of Findings, was not yet published. In that LOF, the Department sustained Taxpayer in relation to its sales to non-residents in which delivery occurred outside of Indiana. As it pertained to the two sales of RVs which were to be registered in a reciprocal state, the Department sustained Taxpayer on one of the purchases and denied Taxpayer on the other. The Department based its denial on a misunderstanding of the identification of the purchaser. Taxpayer requested a rehearing to address not only the denial, but also the penalties associate with the assessments. The Department granted the rehearing and this Supplemental Letter of Findings results.

I. Gross Retail Tax - Sale of Recreational Vehicles to be Registered in a Reciprocal State.

DISCUSSION

As detailed in the LOF, Taxpayer made two separate sales transactions in Indiana, in which the RV in question was to be registered in a reciprocal state, thus Taxpayer did not collect or remit Indiana sales tax. The LOF noted that both sales took place in Indiana, which would normally source the sale to this state under IC § 6-2.5-13-1(d). However, sales of RVs in Indiana may be exempt from Indiana gross retail tax if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer or recreational vehicle, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer or recreational vehicle will be titled or registered for use in another state or country;
- (4) the cargo trailer or recreational vehicle will not be titled or registered for use in Indiana; and
- (5) the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

IC § 6-2.5-5-39(c).

The LOF also looked to Sales Tax Information Bulletin 28S (March 2017), which states that, for recreational vehicles and trailers:

A full exemption is applicable to the purchase of a recreational vehicle . . . or a cargo trailer by a [nonresident], if the purchaser affirms the purchase will be registered/titled within 30 days in a reciprocal state or country. A reciprocal state is one that allows an exemption to an Indiana resident who purchases an RV or a cargo trailer to be registered/titled in Indiana.

...

To claim an exemption for a transaction involving a recreational vehicle or cargo trailer, the purchaser must complete Form ST-137RV. The original signed copy must be mailed to the department within 30 days of delivery. Sales Tax Information Bulletin 28S (March 2017), 20170426 Ind. Reg. 045170210NRA.

Sales Tax Information Bulletin 72 (July 2017) repeats this idea:

Sales of recreational vehicles and cargo trailers by Indiana dealers destined for out-of-state registration are exempt from the Indiana sales tax if the state where the recreational vehicle or cargo trailer will be registered provides a similar exemption for an Indiana resident making a purchase in that state. This exemption also applies to states that do not impose a sales tax. Sales Tax Information Bulletin 72 (July 1, 2017), [20180425-IR-045180188NRA](#).

If the RV is to be transported and titled in a state that does not provide a similar exemption, "the rate at which sales tax is to be imposed and collected on the sale is the rate of the intended destination state or country. However, the dealer and purchaser must complete an ST-108NR to document the collection of sales tax at a rate other than Indiana's 7[percent] rate." *Id.*

In the LOF the Department sustained Taxpayer as it pertained to the second purchase but denied Taxpayer as it pertained to the first purchase. The denial was due to a misunderstanding as to who the purchasing party was. With that misunderstanding cleared the Taxpayer is sustained for the second purchase.

FINDING

Upon rehearing, Taxpayer's protest regarding the second transaction of an RV which was purchased in Indiana and registered in a reciprocal state is sustained.

II. Tax Administration - Negligence Penalty.

DISCUSSION

In its original protest, Taxpayer protested the imposition of the negligence penalty on all four assessments. The LOF failed to address this protest, thus, it is addressed in this Supplemental Letter of Findings.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient documentation establishing that its failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence. Thus, Taxpayer is sustained.

SUMMARY

As it pertains to Issue I and Issue II, Taxpayer is sustained.

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